

CITY COUNCIL
ATLANTA, GEORGIA

**A RESOLUTION
BY FINANCE/EXECUTIVE COMMITTEE**

01- R -0117

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO APPROPRIATE CONTRACTUAL AGREEMENTS WITH XM SATELLITE RADIO, INC. FOR THE LEASE OF THE TOWER STRUCTURE LOCATED AT 2315 BANKHEAD HIGHWAY, CENTER HILL PARK, IN ATLANTA WHICH IS CURRENTLY UTILIZED FOR TELECOMMUNICATIONS PURPOSES TOGETHER WITH STRUCTURES SHOWN ON THE ATTACHED SITE PLAN FOR CERTAIN COMMUNICATIONS EQUIPMENT TO BE LOCATED UPON THE LEASED SPACE; AND FOR OTHER PURPOSES; ALL REVENUE GENERATED SHALL BE DEPOSITED INTO THE FUND ACCOUNT AND CENTER NUMBER 1A01 462201 B00001

WHEREAS, the City of Atlanta is the owner of the property located at 2315 Bankhead Highway Atlanta, Georgia, the Center Hill Park (hereinafter the "Property"); and

WHEREAS, the City of Atlanta owns and operates a telecommunications tower on the Property; and

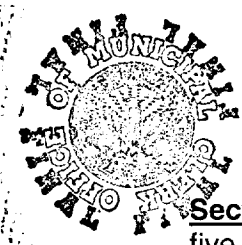
WHEREAS, XM Satellite Radio, Inc. wishes to execute a master Lease and Site Lease for an antenna site located on the Property; and

WHEREAS, the Commissioner of the Department of Administrative Services has recommended that a Master Lease and Site Lease be entered into with XM Satellite Radio, Inc. for the benefit of the City; and

WHEREAS, the term of the Master Lease and concurrent Site Lease will be initially five (5) years and may be automatically renewed for up to four (4) successive five-year periods unless terminated by the City by written notice.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

Section 1: That the Mayor be and is hereby authorized to execute appropriate contractual agreements with XM Satellite Radio, Inc. (the "Tenant") to lease a portion of the Property as shown on the attached site plan, together with appropriate buildings and structures as shown on the site plan.



Section 2: That the Master Lease, including any Site Lease, shall be for an initial term of five (5) years commencing on the date of the agreement.

Section 3: That in the event that the Tenant is not in default during any term of the Master Lease, including any Site Lease, the Tenant shall have the option to renew such Master Lease and Site Lease for four (4) successive five-year renewal periods, not to exceed a total cumulative period of twenty years. **The base monthly rental rate shall be \$2,000 in the first year and after that shall increase each year by the amount of the Consumer Price Index.**

Section 4: That an appropriate contractual agreement or agreements shall be prepared for execution by the Mayor, to be approved by the City Attorney as to form.

Section 5: That all revenue generated shall be deposited into the general fund center, account number 1A01 462201 B00001.

Section 6: That such contractual agreement or agreements shall not become binding on the City, and the City shall not incur any liability upon the same until such agreement or agreements have been approved as to form by the City Attorney, executed by the Mayor, sealed by the Municipal Clerk and delivered to the contracting party.

A true copy,

Rhonda Daughin Johnson
Municipal Clerk, CMC

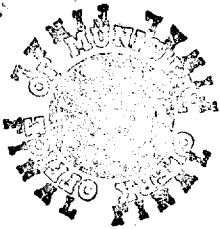
ADOPTED as amended by the Council

APPROVED by the Mayor

FEB 05, 2001

FEB 13, 2001

OMC – Amendment Incorporated by tcp 2/16/01



LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is entered into this ____ day of _____, 2000 (the Date of the Agreement") between the CITY OF ATLANTA, GEORGIA, a public body corporate and politic ("LANDLORD) and XM SATELLITE RADIO INC. a Delaware Corporation ("TENANT").

WHEREAS, the execution of this Agreement on part of the City has been authorized by Resolution _____, adopted by the City Council on _____ and approved by the Mayor on _____, 2000, copy of which Resolution is attached hereto as Exhibit "C"; and

WHEREAS, Tenant desires to leases portions of certain real property, buildings and other tower improvements of Landlord as provided herein.

WHEREFORE, Landlord and Tenant hereby agree as follows:

1. Definitions. As used herein, the following capitalized terms shall have the respective meanings ascribed to them below:

"Additional Site Lease" shall have the meaning ascribed thereto in Section 20 hereof. Unless the context demands otherwise, references herein to a "Site Lease" shall also be deemed to refer to an "Additional Site Lease".

"Antenna Facilities" shall mean (I) radio and other communications transmitting and receiving antennas, supporting mounts, cable, equipment, equipment storage structures and improvements related thereto constructed or installed by Tenant and (ii) in the case of a Real Property Site, a communications tower and base constructed or installed by tenant.

"Building" shall mean any building of Landlord on a Site and designated by both parties for potential leasing by Tenant pursuant to this Lease.

"Building Premises" shall mean designated Premises within a Building and leased by Tenant pursuant to a Site Lease and used for the storage and operation of communications equipment and related purposes.

"Building Site" means any Site on which the Premises consist of a portion of a Rooftop and, if applicable, Building Premises.

"Landlord Tower" shall mean any communications tower erected or constructed by or on behalf of Landlord on a Site.



"Premises" shall mean that portion or those portions of any Site consisting, as the case may be, of designated portions of Real Property, the

Rooftop, Building Premises and/or Landlord Tower that are leased by Tenant pursuant to a Site Lease.

"Real Property" shall mean the real property component of any Site.

"Real Property Site" means any Site on which Tenant proposes to erect or construct a communications tower to be mounted in the ground.

"Rooftop" shall mean the surface of the roof level of a Building located within and including the parapet walls and reasonable projections therefrom and as may be depicted on the appropriate exhibit to the Site Lease relating thereto.

"Sites" shall mean those locations listed on Exhibit A attached hereto and consisting of the underlying Real Property and any Buildings, Landlord Towers and other improvements thereon and appurtenances thereto.

"Site Lease" shall mean an individual Lease Agreement, to be substantially in the form of Exhibit B attached hereto, pursuant to which Tenant shall lease the Premises at any site.

"Tower Site" means any Site as to which a part of the Premises consists of space located on Landlord Tower.

2. Lease. This Lease is a Lease and sets forth the basic terms and conditions upon which portions of Real Property, Buildings and Landlord Towers, as the case may be, shall be leased by Landlord to Tenant. Upon the parties' agreement as to the particular terms for the lease of the Premises at a certain Site, the parties shall insert the appropriate terms and information, execute deliver and attach hereto a Site Lease. As to any Site and the Premises thereon, the terms and conditions of the Site Lease pertaining thereto shall govern and control in the event of a discrepancy or inconsistency with the terms and conditions of the Lease.
3. Premises. Landlord owns the Sites. Subject to the terms and conditions of this Lease and the Site Lease for each particular Site, landlord hereby leases to Tenant the respective Premises described in each Lease. In the case of real Property Sites and Tower Sites, Landlord further grants to Tenant a non-exclusive easement benefiting such Sites for pedestrian and vehicular ingress and egress and the installations of utilities serving such Sites and improvements thereon over other property of Landlord and included in such Sites, if applicable, and to be designated on an individual basis in each appropriate Site Leases.
4. Term.



- a. The term of this Lease shall commence upon the execution and delivery of this Lease and shall expire at midnight on the first date of which all Site Leases have expired or terminated. The term of any particular Site Lease shall commence on the earlier of (i) the date pursuant to Section 7 below, but in no event later than the date Tenant commences construction or installation of its communications antennas or tower improvement on the Premises, or (ii) the first day after expiration of the "Due Diligence Period" as defined in Section 7 below and in the Site Lease (such earlier date being the "Commencement Date"). Unless otherwise stated in the Site Lease, the initial term of the Site Lease shall expire at midnight on the day before the fifth (5th) anniversary of the Commencement Date thereunder.
- b. Tenant shall have the right to extend each Site Lease (unless otherwise provided therein) for four (4) additional, five year terms (each being a "Renewal Term"). Tenant's lease of the Premises during each Renewal Term shall be on the same terms and conditions as set forth herein and the monthly amount of Rent payable under each Site Lease shall be as provided in Section 5 hereof. Each Site Lease shall automatically renew for each successive Renewal Term unless Tenant notifies Landlord in writing of Tenant's intention not to renew such Site Leases at least sixty (60) days prior to the expiration of the initial term or any Renewal Term thereunder. Notwithstanding anything to the contrary contained herein, in no event shall this Lease terminate so long as any Site Lease remains in force and effect.
- c. If Tenant shall remain in possession of the Premises at the expiration of the initial term of any Site Lease or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease and Site Lease pertaining to such Premises.

5. Rent.

- a. Tenant shall pay to Landlord, commencing upon the Commencement date of the Site Lease pertaining thereto, monthly rent in an amount of Two Thousand Dollars (\$2,000.00) Monthly Rent under any such Site Lease shall not be adjusted until the first Renewal Term as provided in Sections 5.C. hereof.
- b. For each Site that is subject to a Site Lease, commencing on the first date of the first Renewal term hereunder, Tenant shall pay landlord monthly Rent in the amount of Two Thousand Dollars (2,000.00). Unless otherwise provide in a Site Lease, monthly Rent shall be payable on the first day of each calendar month in advance at



landlord's address specified in Section 15 below. If the Renewal Term commences on other than the first day of a month, Rent shall be prorated for the first month for the number of days from such date of commencement to the end of the month. If a Site Lease is terminated on a day other than on the last day of a month, the Rent shall be prorated as of the date of termination.

- c. Following the first Renewal Term under any Site Lease, monthly Rent payable under such Site Lease during each successive Renewal Term shall be equal to one hundred four percent (104%) or the CPI, whichever is greater, of the Rent in effect for the last full calendar month immediately prior to the commencement of such Renewal Term.
- d. Tenant shall have the right to use a direct deposit system with regard to Rent payments. Landlord agrees to cooperate with tenant in providing requisite information to Tenant for such direct deposit. The implementation of the direct deposit system shall be at Tenant's expense.

6. Permitted Use. The Premises may be used for (i) the transmission, reception and relay of communication signals, (ii) the construction, alteration, maintenance, repair, replacement and relocation adjustment of Antenna Facilities and (iii) activities related to any of the foregoing (collectively, "Tenant's Permitted Use").

7. Due Diligence Period. With respect to each Site, from and after the Date of this Agreement through and including the date which is six (6) months after the date of any Site Lease executed with respect to such Site (the "Due Diligence Period"), Tenant and its agents, engineers, contractors and other representatives shall have the right to enter upon the subject Site to inspect, examine, conduct soil borings, drainage testing, material sampling and conduct any other geological or engineering tests or studies of the Site to apply for and obtain all licenses and permits required for Tenant's Permitted Use of the Premises from all applicable governmental or regulatory entities ("Governmental Approval"), and otherwise do those things on or off the Site that, in the opinion of Tenant, are necessary to determine the physical condition and history of the Site, Landlord's title to the Site and the feasibility or suitability of the Site for Tenant's Permitted Use, all at Tenant's expense. At Tenant's request, Landlord shall provide Tenant with a copy of any owner's or mortgagee's title insurance policy most recently obtained by or at the request of Landlord with respect to such Site. Tenant shall not be liable to Landlord or any third party on account of any pre-existing defect or condition on or with respect to the Site, whether or not such defect or condition is disclosed by Tenant's inspection. If in the sole and absolute opinion of Tenant, the Premises located at the subject Site are not suitable for Tenant's intended use or Tenant determines that the operation of a communications facility on or within such Premises would not be in Tenant's best interests. Tenant shall have the right at any time prior to the expiration of



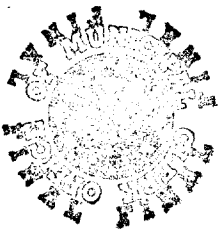
the Due Diligence Period to terminate the Site Lease pertaining thereto by sending written notice of termination to Landlord. Thereafter, neither Landlord nor Tenant shall have any further obligation or liability under such Site Lease except as otherwise provided herein or therein.

8. Interference.

- a. Tenant shall not use any Premises in any way that interferes with the use of the pertinent Site by: (i) landlord, (ii) tenants or licensees of Landlord using or occupying the Site on the date of the Site Lease relating thereto ("Existing Tenants"). Landlord hereby acknowledges that Tenant's use of the Premises for Tenant's Permitted Use shall not constitute an impermissible interference by Tenant.

9. Improvements; Utilities; Access.

- a. Tenant or its affiliates shall have the right, at its expense, to install, construct and maintain in the Premises from time to time the Antenna Facilities. Tenant shall have the right to modify, supplement, replace, upgrade or relocate the Antenna facilities within the Premises at any time during the term of the Site Lease relating thereto as it may be extended. All work by Tenant shall be performed in compliance with applicable laws and ordinances. Tenant is not authorized to contract for or on behalf of Landlord for work on, or the furnishing of materials to any Premises or any other part of any Site, and Tenant shall discharge or record by payment, bond or otherwise, with ten (10) days subsequent to the date of its receipt of notice thereof from Landlord, any mechanic's, laborer's or similar lien filed against any Premises or any Site for work or materials claimed to have been furnished at the instance of Tenant. The Antenna Facilities shall remain the exclusive property of Tenant, and Tenant shall have the right to remove all or any portion of the Antenna Facilities at any time during the term of this Lease, the term of the relevant Site Lease and following any termination of the Site Lease or of this Lease. Any property which is not removed by tenant within ninety (90) days after the expiration or earlier termination of the Site Lease pertaining to such property shall, upon the expiration of said ninety (90) day period, become the property of Landlord, and tenant shall thereafter have no rights, obligations or liabilities whatsoever with respect thereto. During any period of Tenant's exercise of its rights under the subsection, Tenant shall have, and Landlord hereby grants to Tenant, with respect to any Real Property site or Tower Site, a temporary construction easement to use portions of Landlord's property reasonably necessary for the storage of materials and staging of construction.



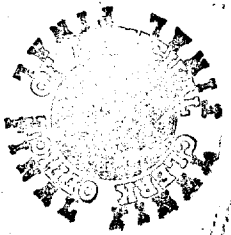
- b. Tenant shall, at Tenant's expense, keep and maintain the Premises in commercial reasonable condition and repair during the term of this Lease and of the Site lease pertaining thereto. Upon termination of each Site Lease, Tenant will return the subject Premises and all improvements thereon not removed by tenant in good condition reasonable wear and tear excepted.
- c. Tenant shall pay any incremental, additional utilities charged on the Site as a result of tenant's use of the Premises. Tenant shall have the right, at Tenant's expense to install utilities within each Site and to install or improve utilities on the Premises (including, but not limited to the installation of emergency power generators).
- d. Landlord shall provide Tenant ingress and egress to and from the Premises adequately to service the Premises, the Antenna Facilities and all utility facilities serving the Premises at all times during the term of the Site Lease applicable thereof. Tenant shall be entitled to twenty-four (24) hour, seven (7) days per week, access to the Premises, the Antenna Facilities, such utility facilities and shall have all additional rights of access and ingress and egress to and from each Premises as provided in the Site Lease pertaining thereto.
- e. Tenant, at its expense, may use any and all appropriate means of restricting access to the Antenna facilities, including construction of a fence. In the case of a Building Site where the premises are comprised, in part, of Building Premises, Tenant shall have the right to install, in certain areas of the Building as reasonably determined by Landlord and Tenant, conduit and sleeving connecting the Rooftop and Building Premises and servicing the Antenna Facilities.
- f. Tenant shall be entitled and authorized to seek, apply for and otherwise request whatever zoning, application, permitting or regulatory exemptions that may now or hereafter be available to Tenant on account of, or as a result of, the Sites and any improvements thereon being owned by Landlord, which is a public body corporate and politic; provided, however, however, that Landlord make no representation or warranty herein as to tenant's ability to receive any such exemption.
- g. With respect to any Tower Site, if tenant shall determine that reinforcement, refurbishment or other improvement to the Landlord Tower is necessary for the property and effective installation and operation of Antenna Facilities, tenant shall be entitled, at Tenant's sole cost and expense, to make such reinforcement, refurbishment or other improvement to the Landlord Tower; provided, however, that



tenant shall not in so doing injure or damage the Landlord tower or interfere with Landlord's operations or the relevant Tower Site.

10. Termination. Except as otherwise provided herein or therein, a Site Lease may be terminated, without any penalty or liability to the terminating party, as follows:

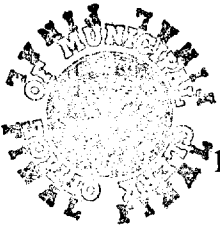
- a. by Landlord if Tenant fails to cure a default for payment of amounts due under such Site Lease within fifteen (15) days after Tenant's receipt of written notice of default from Landlord;
- b. by either party if the other party defaults (other than a default described in Section 10. A. above) and fails to cure such default within thirty (30) days after written notice of such default is received by the defaulting party from the non-defaulting party; provided, however, that if such default is capable of being cured, but not within such 30-day period, the Site Lease may not be terminated so long as the defaulting party commences appropriate curative action within such 30-day period and thereafter diligently prosecutes such cure to completion as promptly as possible;
- c. by Tenant upon sixty (60) days written prior notice if it is unable to obtain, maintain or otherwise forfeits or cancels any liens, permit or Governmental Approval necessary for the construction or operation of the Antenna Facilities or Tenant's actual or intended use of the Premises under such Site Lease or;
- d. by Tenant upon (60) days prior written notice without further liability, if Tenant determines, in its reasonable discretion exercised in good faith, that based on (i) technology, (ii) interference with use of the Premises resulting from the acts of any third party, an act of God or from other natural forces or (iii) changes in system design or system usage patterns, Tenants use of the antenna facilities (as the same may have been modified from time to time) or the subject Premises is no longer consistent with the optimal operation Tenant's communications system.
- e. The termination by Tenant of any one or more Site Leases shall not affect Tenant's obligations for the payment of monthly Rent for the remaining and active Site Leases under Section 5.a. hereof and/or any rights or duties of either party under Section 20 hereof for the remaining and active Site Leases.



11. Casualty and Condemnation.

- a. If at any time during the term of any Site Lease or “substantially all” (meaning the remaining portion thereof shall not be of sufficient size or condition to permit the continuation of Tenant’s Permitted Use in a commercially reasonable manner) of the Antenna Facilities upon the Premises leased or licensed under such Site Lease shall be damaged and/or destroyed by fire or other casualty, then Tenant may terminate such Site Lease by providing written notice to Landlord, which termination shall be effective as of the date of such damage and/or destruction, and whereupon Tenant shall be entitled to collect all insurance proceeds payable on account thereof and to the reimbursement of any prepaid Rent thereunder, to be apportioned as of the termination date.
- b. If at any time during the term of any Site Lease all or “substantially all” (as described in the preceding subsection 11.a) of the Premises leased or licensed thereunder or the Improvements located on the Site shall be taken in the exercise of the power of eminent domain by any governmental or other authority, or by deed in lieu of condemnation, then tenant may terminate such Site Lease by providing written notice to Landlord, which termination shall be effective as of the date of the vesting of title in such taking and any prepaid rent thereunder shall be apportioned as of said date and reimbursed to Tenant. Landlord and tenant shall each be entitled to pursue their own separate awards with respect to such taking, In the event of any taking of less than all or substantially all of the Premises, such Site Lease shall continue and each of Landlord and Tenant shall be entitled to pursue their own separate awards with respect to such taking.

12. **Taxes.** For each Site that is subject to a Site Lease, Tenant shall pay any personal property taxes assessed on, or any portion of such taxes attributable to, the Antenna Facilities located thereon. Landlord shall pay when due all real property taxes and all other fees and assessments attributable to the Premises and the Site. However, Tenant shall pay, as additional rent, any increase in real property taxes levied against the Premises (excluding any additional taxes that relate to the period prior to the Commencement date, i.e., roll-back taxes) which is directly attributable to Tenant’s use of the Premises, and Landlord agrees to furnish necessary and reasonable documentation evidencing.



13. Insurance and Subrogation.

- a. Tenant will provide Commercial General Liability Insurance in an aggregate amount of \$1,000,000 and name Landlord as an additional insured on the policy or policies. Tenant may satisfy this requirement by obtaining appropriate endorsement to any master policy of liability insurance maintained by tenant.
- b. Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard "All Risk" insurance policy, and in the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other. Each party hereto shall obtain from its insurers under all policies of fire, theft and other casualty insurance, if any, maintained by it at any time during the term of the Lease, insuring or covering the Premises or the Sites or Landlord's property or any portion thereof, improvements or operations therein, a waiver of all rights of subrogation which the insurer might have against the other party.

14. Hold Harmless. Tenant agrees to indemnify, defend and hold Landlord harmless from and against injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorney's fees and court costs) arising from the installation, use, maintenance, repair or removal of the Antenna Facilities or the breach of this Lease or any Site Lease, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, agents or independent contractors.

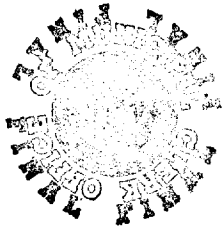
15. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given in personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following address:

If to landlord, to:

City of Atlanta
Department of Administrative Services
Suite 3250
69 Mitchell Street, S.W.
Atlanta, Georgia 30335-0303
Attention: Commissioner

With a copy to:

City of Atlanta
Law Department
Suite 4100



68 Mitchell Street, S.W.
Atlanta, Georgia 30335-0303
Attention: City Attorney

If to Tenant, to:

XM Satellite Radio
1500 Eckington Place, N.E.
Washington, D.C. 20002-2194
Attention: Joe Titlebaum

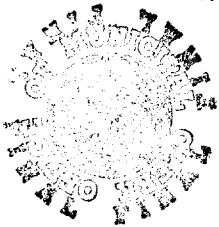
16. Quiet Enjoyment, Title and Authority Quiet Enjoyment, Title and Authority.

Landlord covenants and warrants that (i) it has full right, power and authority to execute this Lease and each Site Lease and has the power to grant all rights hereunder and thereunder; (ii) it has good, marketable and unencumbered title to the Sites free and clear of any liens, mortgages, restrictions or other encumbrances that will interfere with Tenants Permitted Use of Premises; (iii) its execution and performance of this Lease and each Site Lease will not violate any laws, ordinances, covenants, or the provision of any mortgage, lease or other agreement binding on Landlord; and (iv) Tenant shall have the quiet enjoyment of the Premises, and tenant shall not be disturbed as long as Tenant is not in default beyond any applicable grace or cure period.

17. Environmental Laws. As used herein, the term "Environmental Laws" shall mean any and all local, state or federal statutes, regulations ordinances pertaining to the environment or natural resources. As used herein, the term "Hazardous Substance" shall mean any toxic or hazardous waste or substance (including, without limitation, asbestos and petroleum products) that is regulated by Environmental Law.

Tenant represents, warrants and agrees that it will conduct its activities on each Site in compliance with all applicable Environmental Laws. Landlord represents warrants and agrees that it has in the past and will in the future conduct its activities on each Site in compliance with all applicable Environmental Laws and that each Site is free of any Hazardous Substance as of the date of this Lease.

Landlord shall be responsible for, and shall promptly conduct any investigation and remediation as required by any Environmental Laws or common law of, all spills or other releases of Hazardous Substance, not caused solely by Tenant, that have occurred or which may occur on any Site.



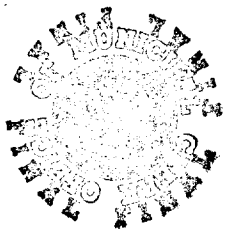
Tenant agrees to defend, indemnify and hold Landlord harmless from and against any and all claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and attorneys' fees that Landlord may suffer due to the existence or discovery of any Hazardous Substance on any Site or the migration of any Hazardous Substance to other properties or released into the environment, that are caused by or result from tenant's activities on such Site.

The indemnifications in this Section specifically include costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. The provisions of this Section will survive the expiration or termination of this Lease and of any Site Lease.

18. Assignment and Subleasing. Tenant may assign this Lease and any Site Lease and its other rights hereunder and thereunder (including, without limitation its right to renew) or sublet the Premises or any portion thereof upon written notice to Landlord, to any person or business entity which is licensed by the Federal Communications Commission, or its successor, to operate a wireless communication business; is a parent, subsidiary or affiliate of Tenant; controls or is controlled by or under controlling interest in the ownership or assets of Tenant. Upon written notification to Landlord by tenant of any such action, Tenant shall be relieved of all future performance, liabilities and obligations under the relevant Site Lease provided such subtenants or assignees agree in writing to be bound by all the terms.

Additionally, Tenant may, upon written notice to Landlord, mortgage or grant a security interest in Tenant's interest, rights or estate under this Lease, any Site Lease and the Antennas Facilities, and may assign this Lease, any Site Lease and the Antenna facilities to any such mortgages or holders of security interests including their successors or assigns (hereinafter collectively referred to as "Mortgagees"), provided such Mortgagees agree to be bound by the terms and provisions of this Lease and any Site Lease so assigned. In such event, Landlord shall execute such consent to leasehold financing as may reasonably be required by Mortgagees. Landlord agrees simultaneously to notify in writing Tenant and a Mortgagee of Tenant having first priority as to Tenant's leasehold interest and which has requested notice from Landlord of any default by Tenant and to give such Mortgagee the same right to cure any default as Tenant, except that the cure period for such Mortgagee shall not be less than ten (10) days after the receipt of the default notice.

19. Leaseback of Antennas Facilities. Tenant hereby agrees that, upon its receipt of a written request therefor from Landlord, Tenant will lease to Landlord, at the rental rate of \$10.00 per year location leased by Landlord, a portion of any communications tower erected by Tenant on a Site for the construction and



installation of Landlord's conditions: (i) Landlord shall first submit to Tenant for Tenant's approval Landlord's plans and specifications for the location of any additional improvements to be installed by Landlord on or about such tower; (ii) the additional improvements proposed by Landlord will not, in Tenant's sole judgment, damage the Antenna facilities or interfere with Tenant's operations or impair the structural integrity of such tower; (iii) the cost of installing any such additional improvements or any additional infrastructure to the Antenna Facilities required as a result of such improvements shall be borne solely by Landlord; and (iv) Landlord hereby agrees to repair or restore any damage or injury to, the Antenna Facilities, Tenant operations arising as a result of the installation and operation of such additional improvement.

20. Lease Option; Right of First Refusal. So long as this Lease is in force and effect and in consideration of the rent and other benefits to be received by Landlord hereunder and under the relocation Agreement, Landlord hereby grants to Tenant an option (the "Option Right") to enter into a Site Lease, pursuant to the terms of this Lease, with respect to those additional sites owned by Landlord. To exercise the Option Right as to an Additional Site, Tenant shall provide written notice of such election to Landlord at least thirty (30) days prior to the date as of which Tenant desires to enter into a Site Lease with respect thereto. Following Landlord's receipt of such notice, the parties shall diligently and promptly executed a Site Lease in the form attached hereto and applicable to such Additional Site (an "Additional Site Lease"). Should Tenant exercise the Option Right as to any Additional Site and not terminate the Site Lease applicable thereto in accordance with Section 7 hereof, monthly Rent shall be payable to Landlord upon the occurrence of the Commencement Date for such Additional Site in the amount provided in Section 5b. of this Lease (as opposed to first becoming payable upon the first renewal Term as is the case with respect to the initial 10 Sites under Section 5 hereof), and monthly Rent shall increase upon the occurrence of each Renewal Term thereunder (commencing with the first such renewal Term, at the rate provided in Section 5.a.) hereof.
21. Successors and Assigns. This Lease shall run with the Sites and shall be binding upon the inure to the benefit of the parties, their respective successors, personal representatives and assigns.
22. Waiver of Landlord's Lien. Landlord hereby waives any and all lien rights it may have, statutory or otherwise, concerning any Antenna Facilities for any portion of this Lease and each Site Lease, regardless of whether any portion thereof is deemed real or personal property under applicable law, and Landlord hereby consents to Tenant's right to remove all or any portion of any Antenna Facilities from time to time in Tenant's sole discretion.



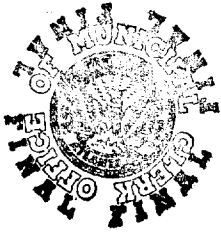
23. Miscellaneous.

- a. The prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorneys' fees and court costs. With respect to this Section 23.a. and any other provision in this lease providing for payment or indemnification of attorneys' fees, such fees shall be deemed to include reasonable fees incurred through any applicable appeal process and shall include fees attributable through any applicable appeal process and shall include fees attributable to legal services provided by any in-house counsel and staff to the prevailing or indemnified part. For purposes hereof, the services of in-house attorneys and their staff shall be valued at rates for independent counsel prevailing in the metropolitan area in which such counsel and staff practice.
- b. Each party agrees to furnish to the other, within ten (10) days after request, such truthful estoppel information as the other may reasonably request.
- c. Each Site Lease, which shall incorporate the terms hereby by reference, shall constitute the entire agreement and understanding of the parties with respect to the Site that is the subject matter thereof and supersedes all offers, negotiations and other agreements with respect thereto. Each Site Lease shall not be deemed to constitute a default under any other Site Lease. There are no representations or understandings of any kind not set forth herein or in the Site Leases. Any amendment to this Lease or any Site Lease must be in writing and executed by both parties.
- d. Each party agrees to cooperate with the other in executing any documents (including a Short Form of Lease) necessary to protect its rights under this Lease and any Site Lease. Unless the laws of the state in which any given Site is located prohibit the recordation of a memorandum of lease, neither party shall record this Lease or the Site Lease pertaining thereto, but may record, in lieu thereof, the aforementioned Short Form of Lease. In the event of a recordation prohibition described above, either party may record this Lease, such Site Lease or both.
- e. This Lease and each Site Lease shall be governed and construed in accordance with the internal laws of the State of Georgia.
- f. If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.
- g. If Landlord fails to perform any of its obligations under this Lease or any Site Lease, and such failure impairs or interferes with Tenant's



Permitted Use of the Premises, Tenant may give Landlord written notice thereof at any time. If Landlord does not cure such failure within thirty (30) days after receipt of such written notice from Tenant, tenant may, at its option without obligation and in addition to any other rights or remedies available to Tenant hereunder or under applicable law, thereafter perform such obligation or other appropriate curative action on behalf and at the expense of Landlord and do all necessary work and make all necessary payments in connection therewith, and Landlord shall, on demand, pay Tenant the amount so paid by Tenant. If Landlord fails to pay Tenant such costs after an additional thirty (30) days notice to Landlord, Tenant may withhold the amount of such costs from installments of Rent next falling due under such Site Lease.

- h. Except as set forth below in Section 23.j., all disputes and claims for damages relating in any way to the performance; interpretation, validity or breach of this Lease shall be referred to final and binding arbitration, before a single arbitrator, under the commercial arbitration rules of the American Arbitration Association. All documents, material, and information in the possession of each party and in any way relevant to the claims or disputes shall be made available to the other party for review and copying not later than sixty (60) days after the notice of arbitration is served. To the extent that either party would be required to make confidential information available to the other, an agreement or order shall be entered in the proceeding protecting the confidentiality of, and limiting access to, such information before either party is required to produce such information. Information produced by either party shall be used exclusively in the arbitration or litigation that may arise and shall not be otherwise disclosed.
- i. Neither party hereto shall be required to submit to arbitration any disputes or claims based upon or arising out of any of the following matters, but shall be at all times entitled to pursue any remedies or rights that such party may have at law or in equity, including, without limitation, the right to seek any available injunctive relief; (i) the parties' respective duties of non-interference in Section 8 hereof; and (ii) Tenant's access to the Premises for testing and inspection of the Premises and construction, maintenance and operation of the Antenna Facilities.
- j. This Agreement may be executed in several counterparts, each of which shall be an original and all of which when taken together constitute one and the same agreement.
- k. Non-Discrimination. Tenant agrees that, during the term of this lease agreement and any extension thereof, it is bound by and will comply with the equal Employment Opportunity (EEO) provisions and equal business



Opportunity (EBO) provision of Part two of the Code of Ordinances of the City of Atlanta, said provisions were set forth at length in the body of this agreement. Tenant further agrees that it shall comply with the City's requirements for contractors with respect to First Source Jobs and Business non-discrimination.

1. Effect of Agreement. This Agreement shall not become binding upon Landlord, and Landlord shall incur no liability upon the same, until this Agreement has been authorized by Landlord's City Council, approved as to form by Landlord's City Attorney, signed by the Mayor, sealed by the Municipal Clerk and delivered to the Tenant.

(The remainder of this page is intentionally left blank)



The parties have entered into this Master Lease as of the date first stated above.

LANDLORD:

Signed, sealed and delivered
In the presence of

Municipal Clerk

CITY OF ATLANTA

BY: _____
Mayor

RECOMMENDED:

Commissioner, Department of
Administrative Services

APPROVED:

Chief Operating Officer

APPROVED AS TO FORM

Senior Assistant City Attorney

APPROVED

Chief Financial Officer

TENANT:

Attest:

Corporate Secretary (Seal)

President/Chief Executive Officer



IN WITNESS WHEREOF, the parties hereto have set their hand and affixed their respective seals the day and year first above written.

TENANT:

XM SATELITTE RADIO INC.,
A DELAWARE COPORATION

By: Royce J. Lincaid

Print Name: Royce J. Lincaid

Title: VP. Terr. Rpt. Program

Execution Date: December 7, 2000

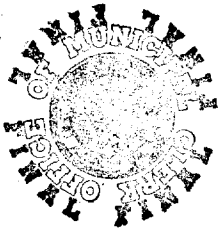


EXHIBIT B
TO THE MASTER LEASE AGREEMENT DATED _____, 2000
BETWEEN THE CITY OF ATLANTA, AS LANDLORD, AND XM SATELLITTE
RADIO INC., TENANT

Cell Site ID: _____
State: Georgia
City: Atlanta

City Site Name: Center Hill Park

LEASE AGREEMENT

THIS LEASE AGREEMENT this "Lease") is entered into this ____ day of _____, 2000, between the City of Atlanta, a body corporate and politic ("Landlord"), and XM Satellite Radio Inc, ("Tenant").

1. **Incorporation of Master Lease.** This Lease is a "Site Lease" as referenced in that certain Master Lease Agreement between Landlord and Tenant, dated _____, 2000 (the "Master Lease"). All of the terms and conditions of the Master Lease are hereby incorporated herein by reference and made a part of hereof without the necessity of attaching hereto the original or any copy of the Master Lease. Unless expressly modified herein, the terms and conditions of the Master Lease shall govern with respect to the subject matter hereof, and, unless otherwise defined herein, capitalized terms used herein shall have the respective meanings ascribed thereto in the Master Lease.
2. **Premises.** The Premises leased by the Landlord to tenant hereunder are as follows: (Legal description to be provided as Exhibit A-1)
3. **Term.** The initial term of this Lease shall commence and expire and expire as set forth in Section 4.a. of the Master Lease.
4. **Rent.** Upon the occurrence of the first Renewal Term, monthly Rent hereunder shall be payable monthly in the amount of Two Thousand Dollars (\$2,000.00) per month.
5. **Special Access Arrangements.** Landlord hereby grants to Tenant a non-exclusive easement benefiting Tenant's interest in the Premises for pedestrian and vehicular ingress and egress, the installation of utilities serving the Premises and improvements thereon, and the maintenance and installation of guy wires and other such mechanisms required or recommended, over the property including improvements on the property of Landlord which surrounds the Premises. In this regard,



Landlord shall also provide the tenant and any and all keys and or combinations to any locks to allow tenant full access for purposes of tenant's easement set forth in the immediately preceding sentence.

(The remainder of this page is intentionally left blank)



The parties have entered into this Site Lease as of the date first stated above.

LANDLORD:

Signed, sealed and delivered
In the presence of

CITY OF ATLANTA

Municipal Clerk

BY: _____
Mayor

RECOMMENDED:

APPROVED:

Commissioner, Department of
Administrative Services

Chief Operating Officer

APPROVED AS TO FORM

APPROVED

Senior Assistant City Attorney

Chief Financial Officer

TENANT:

Attest:

Corporate Secretary (Seal)

President/Chief Executive Officer



IN WITNESS WHEREOF, the parties hereto have set their hand and affixed their respective seals the day and year first above written.

TENANT:

XM SATELITTE RADIO INC.,
A DELAWARE COPORATION

By: Royce J. Kincaid

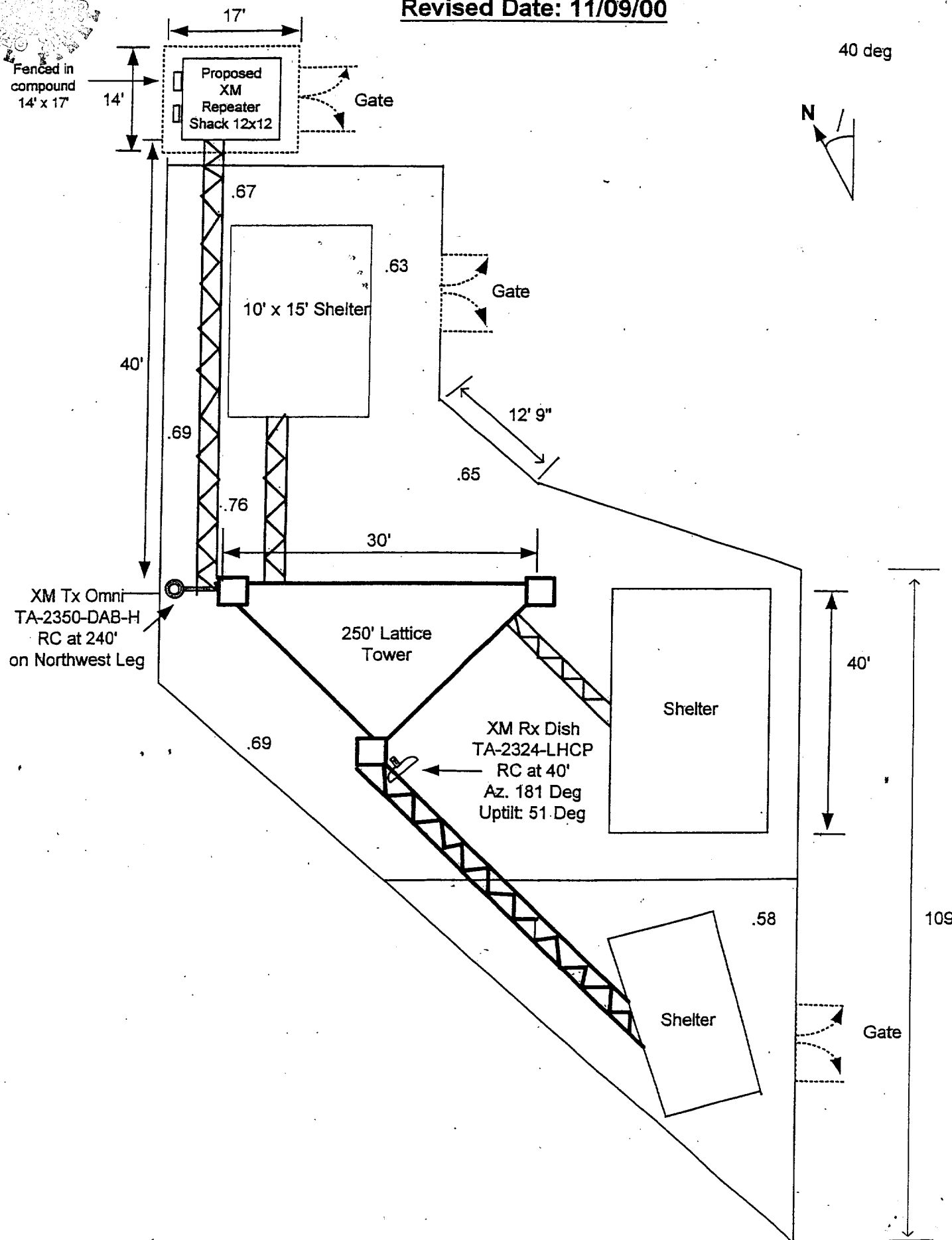
Print Name: Royce J. Kincaid

Title: VP. Tenn. Rpt. Program

Execution Date: December 7, 2000

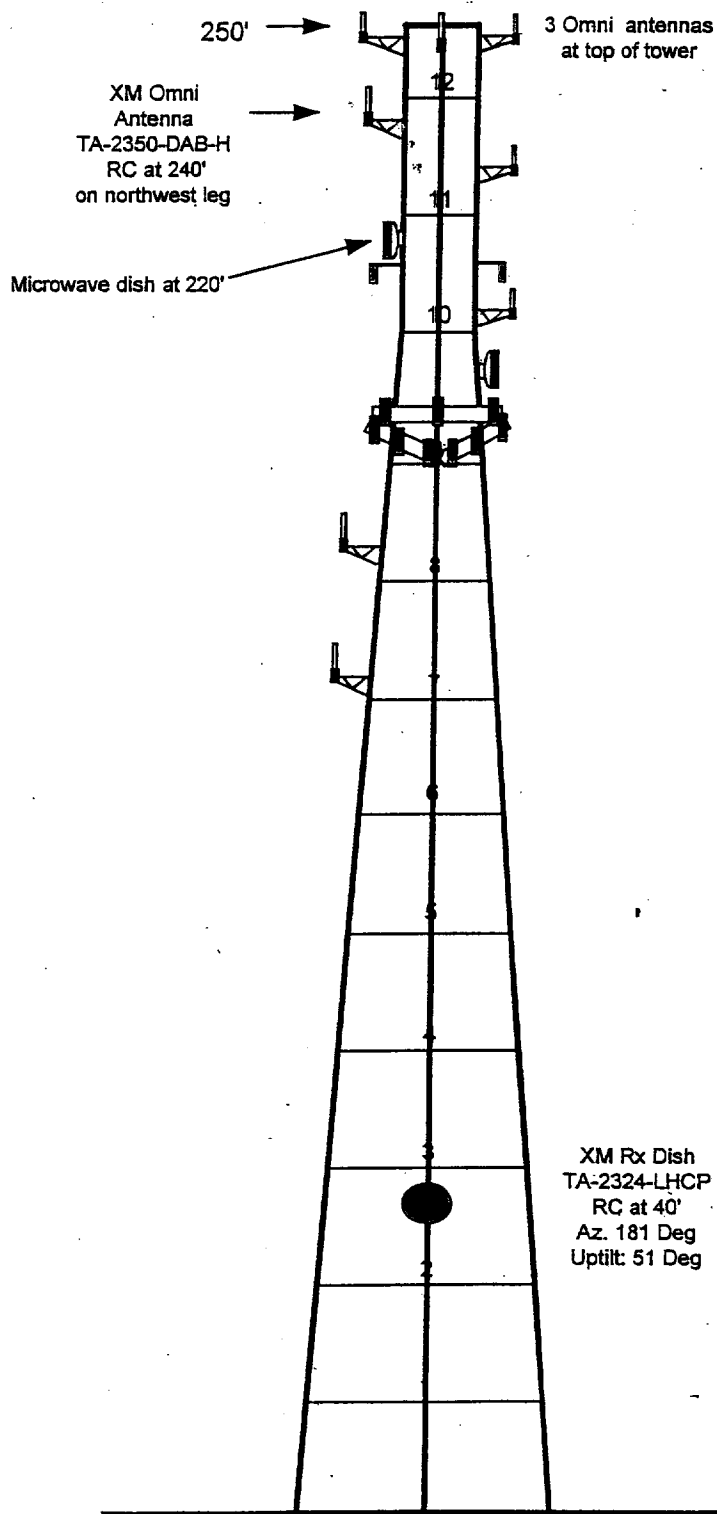


ATL041B
Revised Date: 11/09/00

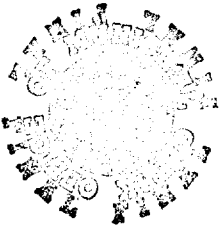




ATL041B
250' Lattice Tower
Revised Date: 8/03/00



Note: Only neighboring antennas shown



RCS# 2577
2/05/01
2:28 PM

Atlanta City Council

Regular Session

CONSENT

Pages: 1-14

ADOPT

YEAS: 14
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 0
ABSENT 1

SEE ATTACHED LISTING OF
ITEMS ADOPTED/ADVERSED
ON CONSENT AGENDA

| | | | |
|-----------|-----------|-----------|-------------|
| Y McCarty | B Dorsey | Y Moore | Y Thomas |
| Y Starnes | Y Woolard | Y Martin | Y Emmons |
| Y Bond | Y Morris | Y Maddox | Y Alexander |
| Y Winslow | Y Muller | Y Boazman | NV Pitts |

ITEM (S) REMOVED FROM
CONSENT AGENDA
00-O-2069
01-O-0083
01-R-0074
01-R-0092
01-R-0093

CONSENT

ITEMS ADOPTED ON CONSENT
AGENDA

1. 00-O-1856
2. 01-O-0091
3. 01-O-0094
4. 01-O-0065
5. 01-O-0090
6. 01-O-0097
7. 01-O-0109
8. 00-R-2105
9. 01-R-0078
10. 01-R-0153
11. 01-R-0102
12. 00-R-0729
13. 01-R-0071
14. 01-R-0077
15. 01-R-0114
16. 01-R-0115
17. 01-R-0116
18. 01-R-0117
19. 01-R-0118
20. 01-R-0145
21. 01-R-0149
22. 01-R-0073
23. 01-R-0101
24. 01-R-0147
25. 01-R-0119
26. 01-R-0120
27. 01-R-0122
28. 01-R-0123
29. 01-R-0124
30. 01-R-0125
31. 01-R-0126
32. 01-R-0127
33. 01-R-0128
34. 01-R-0129
35. 01-R-0130
36. 01-R-0146

ITEMS ADVERSED
ON CONSENT AGENDA

37. 01-R-0131
 38. 01-R-0132
 39. 01-R-0133
 40. 01-R-0134
 41. 01-R-0135
 42. 01-R-0136
 43. 01-R-0137
 44. 01-R-0138
 45. 01-R-0139
 46. 01-R-0140
 47. 01-R-0141
 48. 01-R-0142
 49. 01-R-0143
 50. 01-R-0144
-

01-R -0117

(Do Not Write Above This Line)

A RESOLUTION BY FINANCE/EXECUTIVE COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO APPROPRIATE CONTRACTUAL AGREEMENTS WITH XM SATELLITE RADIO, INC. FOR THE LEASE OF THE TOWER STRUCTURE LOCATED AT 2315 BANKHEAD HIGHWAY, CENTER HILL PARK, IN ATLANTA WHICH IS CURRENTLY UTILIZED FOR TELECOMMUNICATIONS PURPOSES TOGETHER WITH STRUCTURES SHOWN ON THE ATTACHED SITE PLAN FOR CERTAIN COMMUNICATIONS EQUIPMENT TO LOCATED UPON THE LEASED SPACE; AND FOR OTHER PURPOSES; ALL REVENUE GENERATED SHALL BE DEPOSITED INTO THE FUND ACCOUNT AND CENTER NUMBER 1A01 462201 B00001

ADOPTED BY

FEB 05 2001

COUNCIL
AS AMENDED

- ☐ CONSENT REFER
- ☐ REGULAR REPORT REFER
- ☐ ADVERTISE & REFER
- ☐ 1st ADOPT 2nd READ & REFER
- ☐ PERSONAL PAPER REFER

Date Referred

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee _____
Date _____
Chair _____
Referred to _____

Committee FIN
Date 1-31-01
Chair [Signature]
Action: Admnd
Fav, Adv, Hold (see rev. side)
Other: [Signature]
Members [Signature]
Refer To [Signature]

Committee _____
Date _____
Chair _____
Action: _____
Fav, Adv, Hold (see rev. side)
Other: _____
Members _____
Refer To _____

Committee _____
Date _____
Chair _____
Action: _____
Fav, Adv, Hold (see rev. side)
Other: _____
Members _____
Refer To _____

Committee _____
Date _____
Chair _____
Action: _____
Fav, Adv, Hold (see rev. side)
Other: _____
Members _____
Refer To _____

FINAL COUNCIL ACTION

☐ 2nd ☐ 1st & 2nd ☐ 3rd
Readings
☒ Consent ☐ V Vote ☒ RC Vote

CERTIFIED

CERTIFIED
FEB 05 2001
ATLANTA CITY COUNCIL PRESIDENT
[Signature]

CERTIFIED
FEB 05 2001
Mayor's Office
[Signature]

MAYOR'S ACTION

FEB 03 2001

[Signature]